

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MAKSIM LUTSKOV,  
Petitioner.

v.

LOIS RUSSO,  
SUPERINTENDENT OF  
SOUZA-BARONOWSKI  
CORRECTIONAL CENTER  
Respondent.

Addendum To Petition Under  
28 U.S.C. § 2254 For Writ Of  
Habeas Corpus

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Now comes the Petitioner, Maksim Lutskov, and submits this Addendum to his Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus, with respect to additional facts that support Petitioner's grounds for relief.

ADDITIONAL FACTS THAT SUPPORT  
PETITIONER'S GROUNDS FOR RELIEF.<sup>1</sup>

The Commonwealth's Case:

At approximately 9:00 PM on October 31, 1999, after earlier handing out candy to trick-or-treaters, teenager Fulia Aiken was upstairs in her home in Springfield preparing to go to bed when she heard a knock on the door. (4/31-35). Her father, Ahmet, was upstairs sleeping. (5/89-91). Fulia went downstairs, opened the door and found three boys in costume: one was wearing black clothes and wore a black ski mask; another was wearing a "Jason [old fashioned hockey]

<sup>1</sup> The Record Appendix to the Petitioner's Appellate Brief filed in the Massachusetts Appeals Court shall be cited herein as (R.A. ), citations to the trial transcript shall be cited by transcript volume and page, e.g., (1/10), and where no volume is designated, by date and page, e.g., (Oct.30/10).

mask.” (4/37). She did not get a good look at the third boy, who was standing near the driveway, because there was something covering his face. (4/37-38)

She put candy in two of the boys’ trick-or-treating bags. (4/37). Suddenly the boys forced their way inside the house. (4/39). They grabbed her and pushed her against a wall. (4/39). As she tried to fight them, they demanded to know if anyone was home. (4/39).

Ahmet heard Fulia calling for him, so he rushed downstairs and saw three boys with masks on trying to tie-up his daughter. (5/92-93). The boy in the ski mask had her cornered, and was holding her mouth shut. (4/40, 66). The boy, whom Fulia believed had a Russian accent, was holding a knife. (4/40). The boy taped and taped her hands and her mouth south. (4/41, 66).

When Ahmet, who owned a fruit store and most days would bring home \$3,000-\$6,000 in cash, came downstairs, the boy with the “Jason mask” pointed a gun at him. (4/41). Another of the boys was holding a baseball bat or a stick. (4/41). When the boys told Ahmet to sit down, he kneeled and asked the boys to leave them alone. (4/42). When Ahmet noticed the boys taping Fulia’s hands and mouth, he tried to get up and fight them. (4/42). Fulia next heard three gunshots. (4/42). A lamp shattered and she noticed that her father was bleeding from the face. (4/42).

Ahmet, who was shot once in the arm and once in the stomach, grabbed a frying pan and attacked the boy who had shot him. (5/102). In the ensuing struggle, Ahmet bit one of them on the hand. (5/106). He also knocked the mask

off of the face of the boy with the gun. (4/43, 59-60; 5/108, 113). Ahmet was hit from behind in the back and in the head. (5/108).

Fulia described the boy with the gun, whose mask had been knocked off, as white, aged 16-17, with a "red-flecked" or flushed face, strawberry blond or dark blond hair, approximately 6'2", and although she only saw him for 1-2 seconds, she believed he looked Russian. (4/43-44, 57, 74). He was not wearing army fatigues. (4/58). She did not describe any of the boys as wearing gloves on their hands. (4/163).

During the fight after the three gunshots, Ahmet struck the boy wearing the hockey mask several times in the head. (4/45, 165). The boy with the bat hit Fulia in the back of the head. (4/45). The boy with the ski mask who had taped her mouth and hands opened the door, and all three boys ran out of the house. (4/45). Fulia ran after them and took down the license plate of the car. (4/45). She described it as a white car, "boxy" like a Honda Accord, and looked like it was from the early 1990's. (4/68). She noticed that someone may have been waiting in the car for the three boys. (4/69, 119). Ahmet also saw the white car and part of the license plate. (5/118-119).

Fulia went back inside the house and tried to call the police, but the telephone wire had been cut. (4/46, 64). That night she went to the police station and looked at photos, but she did not see any photos that resembled the boy whose mask had been knocked off. (4/49, 60-61). A few weeks later she looked at a book of photos of Russian males, but although she was "100% sure" that the attackers were Russian, she never picked out the boy whose mask was knocked

off. (1/67). She also did not identify the defendant, Maksim Lutskov, despite being shown his photograph. (4/169-170). Neither Fulia nor Ahmet were able to make an in-court identification of Maksim as one of their attackers.

Officers Thomas Sheehan and Gregory Bigda responded to the Aiken's home on Halloween. (4/75, 125-126). They testified that although Fulia had been confident that she could identify the boy whose mask fell off, after looking at a folder of photos of Russian males, she was unable to identify the boy. (4/106-107, 112-113; 5/169-170). While at the house they found a roll of blue and a roll of gray duct tape. (4/89, 130). They also found a live .32 caliber bullet, as well as two other projectiles. (4/155). State Trooper John Schrijn of the firearms identification section determined that the spent projectiles recovered at the Aiken's house were .32 caliber. (6/77, 87-89). He testified that the gun they were fired from was most likely a handgun. (6/93).

The police dusted for fingerprints and recovered two usable prints off of the hockey mask. (4/131). No other fingerprints were usable. (4/140). Analysis revealed that a print lifted from the hockey mask was Maksim's. (5/168).

The officers later investigated the source of the blue duct tape, which was "unique" tape, and found that only one place in Western Massachusetts used it: Edrom Corporation in Holyoke. (4/135-136). Edron kept this special tape under lock and key because it was very expensive. (4/137). After looking at a list of Edron's employees who spoke either Russian or Polish, they focused their investigation on employee Ivan Koba, who had a son named Alexi Koba ("Koba").

(4/138-139). The license plate of Koba's green Acura Integra was similar to the plate given by Fulia. (4/149-150).

Koba gave a statement to police during a six-hour interrogation on November 5, 2000. (4/145). The police told him that they had his fingerprints (which was not true). (4/212). Koba, who was 19 years old at the time, started shaking, and then suggested that he was willing to cooperate with the police. (4/180).

Koba testified that he had known Maksim and Artem for about one year prior to the incident. (5/214). He claimed that he was not friends with Maksim – they had had “difficulties” prior to the incident; but he also claimed that he had met with Maksim almost every day for an entire year leading up the incident. (5/5-7). He almost had a fight with Maksim a few days before the fight, and admitted that bitter feelings remained between them. (5/23-24).

Koba testified that sometime before Halloween he had met with Artem and Maksim at a chiropractor's office in Springfield. (5/215). The purpose of the meeting had been for Artem and Maksim to ask him if he wanted to make any money breaking into the house of a Turkish drug dealer. (5/26). He claimed that Artem and Maksim had been planning the break-in for a year, but they never told him what their plans were before that day. (5/8). Artem and Maksim told Koba that a carpenter had learned that the Turk's safe contained half a million dollars. (4/217; 5/25-26). The money was supposed to be illegal, and was supposed to be taken to Turkey once a year. (5/29). The Turk was supposed to be a “Boss.” (5/30).

Koba testified that Maksim once drove by his house to show him a gun. (4/218). He also explained that he was with Maksim and Artem when they bought Halloween bags from a Halloween store in East Longmeadow. (4/219-220). He also went with them to a Target store in the Holyoke Mall where they bought two white masks and a "Scream" costume, which included a black cloak. (4/220). They did not use the Scream mask in the robbery. (4/221).

On Halloween, they met at 7:00 at Artem's house, then went to Maksim's house, where they briefly saw Alex Arkhipova, who lived there as well. (4/222-223). They got dressed, with Maksim wearing green army camouflage pants. (4/223). Koba drove them to the Aiken's house and parked on the street. (2/224). They knocked at the door but no one answered. (4/224). They went back to the car, looked around, then returned to the door, knocked again, and this time the girl answered. (4/224). All three of them had sticks. (5/51). Maksim had a small gun, and Artem had a six-inch knife. (5/51-52). Koba and Maksim were on the stoop, and Artem was down below. (4/225).

Koba testified that after the girl put candy in their bags, Koba – whose job was to tie-up the occupants – forced his way inside. (4/226; 5/14). They were telling the girl to shut up when the Turkish man came downstairs as Artem disabled the telephones. (4/226-227). Maksim pointed his gun at the Turkish man and told him to get on the floor. (4/227). The Turkish man pointed at a drawer and said that was where the money was. (4/228). When Artem came back into the room, the Turkish man grabbed him, so Maksim stepped in and they all started fighting. (4/228). Mr. Aiken was hitting them, but Maksim pulled him off.

(4/229). While Maksim had been wrestling, his mask fell off. (4/230). Maksim said, "Don't come toward me or I'm going to shoot you," but when Mr. Aiken continued to come towards him, Koba heard three shots. (4/229). He could not see if the man had been hit, but he could see that the man was bleeding. (4/230).

Koba testified that the Turkish man grabbed a pot and held it in the air as he demanded they leave his house, causing them to all leave, and they drove away in Koba's 1993 Mazda Protege. (4/232; 5/57). Koba left his stick in the house. (4/231). They had been in the house for 15-20 minutes. (4/233).

They went back to Alex Arkhipova's house, changed clothes, put everything in a bag and dropped all of the clothes at the end of a dead end street in Springfield. (4/233). Koba never saw the gun again. (4/234).

One year later the police called, so Koba went to the station, was read his Miranda rights, and after he was told that he could be imprisoned 20 years and might be deported, and after the police told him they had his fingerprints (which was not true), he gave the police a statement. (4/17, 238). No promises were made to him, but he was told that his cooperation would be taken into consideration. (4/238). He met with the Assistant District Attorney and an attorney. (4/238). They drafted a "cooperation agreement," which he signed along with his attorney. (4/245). The agreement did not contain any specific offers. (4/245). He did not expect to walk away from the charges because of his cooperation. (4/247).

Detective Donald Brown of the Springfield police department, who testified (for no particular reason) that he had experience working with "gang